



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2017-0500; FRL-9976-17-Region 4]

Air Plan Approval; Florida; Stationary Sources Emissions Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a portion of a State Implementation Plan (SIP) revision submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP) on February 1, 2017, for the purpose of revising Florida's requirements and procedures for emissions monitoring at stationary sources. Specifically, Florida's February 1, 2017, SIP submittal includes amendments to three Florida Administrative Code (F.A.C.) rule sections, as well as the removal of one F.A.C. rule section from the Florida SIP, in order to eliminate redundant language and make updates to the requirements for emissions monitoring at stationary sources. Additionally, this action includes a correction to remove an additional F.A.C. rule that was previously approved by EPA for removal from the SIP but was never removed. This action is being taken pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective [**Insert date 30 days after date of publication in the Federal Register**].

ADDRESSES: EPA has established a docket for this action under Docket Identification No.

EPA-R04-OAR-2017-0500. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8966. Mr. Febres can also be reached via electronic mail at febres-martinez.andres@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What actions is EPA taking today?

On February 1, 2017, FDEP submitted to EPA for approval a SIP revision for the purpose of updating Florida's requirements and procedures for emissions monitoring at stationary sources. Florida's February 1, 2017, SIP revision includes amendments to three F.A.C. rule

sections and the removal of one F.A.C. rule section from the Florida SIP. Specifically, these changes to Florida's rules include the amendments of Rule 62-297.310, F.A.C. – “General Emissions Test Requirement;” Rule 62-297.440, F.A.C. – “Supplementary Test Procedures;” and Rule 62-297.450, F.A.C. – “EPA VOC Capture Efficiency Test Procedures.” In addition, Florida's February 1, 2017, SIP submittal includes the removal of one of Florida's rule sections from the SIP. Specifically, Florida requested to remove Rule 62-297.401, F.A.C. – “Compliance Test Methods” from the State's implementation plan because it has been repealed at the state level, and, according to the submittal, the section is unnecessary, obsolete or duplicative of other F.A.C. Rules.

Through this rulemaking, EPA is finalizing approval of the portions of Florida's February 1, 2017, SIP revision regarding amendments to Rule 62-297.440, F.A.C., and Rule 62-297.450, F.A.C., as well as the removal of Rules 62-297.401, F.A.C., from the State's implementation plan. The portion of the SIP regarding Rule 62-297.310 was previously approved in a separate rulemaking, which approved several SIP amendments making administrative and recodification changes to Florida's SIP. *See* 82 FR 46682 (October 6, 2017).

In addition to the removal of Rule 62-297.401, F.A.C., EPA is removing Rule 62-297.400, F.A.C. – “EPA Methods Adopted by Reference” from the Florida SIP. The removal of this rule section was previously approved by EPA, but was never reflected in Florida's SIP-approved rules table in 40 CFR 52.520(c). For more detail on the approval to remove Rule 62-297.400, F.A.C., see the June 16, 1999, rulemaking (64 FR 32346).

II. Background

On October 13, 2017, EPA published a proposed rulemaking (82 FR 47662), which

accompanied a direct final rulemaking (82 FR 47636) published on the same date. The proposed rule proposed to approve the portion of Florida's February 1, 2017 SIP revision described above. It also stated that if EPA received adverse comment on the direct final rule, the direct final rule would be withdrawn and all public comments received would be addressed in a subsequent final rule based on the proposed rule. EPA received 11 comments on the direct final rule, 10 of which were not relevant to the action. However, one of those comments was adverse. As a result, the direct final rule was subsequently withdrawn. After considering the adverse comment, EPA is now taking final action, based on the proposed rule, on the portion of Florida's February 1, 2017 SIP revision described above.

III. Analysis of Florida's Submittal

As stated in the proposed rule (82 FR 47662), a detailed rationale for EPA's approval of the above-described portions of Florida's February 1, 2017 SIP revision is set forth in the preamble to the direct final rule (82 FR 47636). In summary, EPA is approving amendments to Rule 62-297.440, F.A.C. that remove several subsections which contain test methods that are either adopted by reference in other rule sections or are now obsolete. EPA is approving amendments to Rule 62-297.450, F.A.C. because the changes clarify and simplify the language in the rule, and are consistent with EPA's VOC capture efficiency test procedure guidelines, as established in the agency's GD-035 guideline. EPA is approving the removal of Rule 62-297.401, F.A.C. from Florida's SIP because the requirements are still in place in other state rules and is unnecessary. Finally, EPA is removing Rule 62-297.400, F.A.C. from Florida's SIP because removal was previously approved by EPA, but was never reflected in Florida's SIP-approved rules table in 40 CFR 52.520(c).

IV. Response to Comments

Comment: As mentioned above, EPA received one adverse public comment on the direct final rule published on October 13, 2017. The comment is available for public viewing as a part of the electronic docket for this rulemaking.¹ In summary, the Commenter requested EPA to take additional public comments on these SIP revisions because the information in the docket was not fully accessible to the public during the initial comment period for this action. A second portion of the comment was not relevant to the action being taken by EPA.

Response: EPA subsequently made the state submittals and related materials fully accessible to the public in the electronic docket, and on December 14, 2017 (82 FR 58790), reopened the comment period for the proposed rule that accompanied the now withdrawn direct final rule. In the rulemaking reopening the comment period, EPA explained that it would accept public comments until January 16, 2018, and that it would address any comments received in a separate final action based on the proposed action published on October 13, 2017 (82 FR 47662). During the reopened comment period from December 14, 2017, until January 16, 2018, EPA received an additional 12 comments, but those comments were not relevant. The 12 additional comments are included in the electronic docket for this action.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Rule 62-297.440, F.A.C., entitled “Supplementary Test Procedures” and Rule 62-297.450,

¹ See Docket Identification No. EPA-R04-OAR-2017-0500 at www.regulations.gov.

F.A.C., entitled “EPA VOC Capture Efficiency Test Procedures,” both state effective on July 19, 2014. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally-enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.²

VI. Final Action

EPA is finalizing approval of the above mentioned changes to the Florida SIP, as submitted to us in Florida’s February 1, 2017, SIP revision. Specifically, EPA is approving the amendments to Rule 62-297.440, F.A.C., and Rule 62-297.450, F.A.C., both state effective on July 19, 2014, as well as the removal of Rule 62-297.401, F.A.C., from Florida’s SIP. In addition, EPA is removing Rule 62-297.400, F.A.C., from Florida’s SIP as approved in a previous rulemaking.³ This action is limited to the two rule revisions and two rule removals mentioned above and does not act on the portion of the February 1, 2017, SIP submittal regarding Rule 62-297.310. As mentioned in Section I above, the changes to Rule 62-297.310, were previously approved in a separate rulemaking. *See* 82 FR 46682 (October 6, 2017).

² 62 FR 27968 (May 22, 1997).

³ *See* Section III of this rulemaking for details on Rule 62-297.400.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after

it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under Section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* Section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 15, 2018.

Onis “Trey” Glenn, III,
Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart K - Florida

2. In §52.520 paragraph (c) is amended under “Chapter 62-297 Stationary Sources–Emissions Monitoring” by:

a. Removing the entries for “62-297.400” and “62-297.401;” and

b. Revising the entries for “62-297.440” and “62-297.450” to read as follows:

§52.520 Identification of plan.

* * * * *

(c) * * *

EPA-Approved Florida Regulations

State citation (Section)	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Chapter 62-297 Stationary Sources – Emissions Monitoring				
**	**	*	*	*
62-297.440	Supplementary Test Procedures	7/10/2014	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
62-297.450	EPA VOC Capture Efficiency Test Procedures	7/10/2014	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
**	**	*	*	*

* * * * *

[FR Doc. 2018-06542 Filed: 3/30/2018 8:45 am; Publication Date: 4/2/2018]